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Department of Water Resources

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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE REQUEST FOR
ADMINISTRATION IN WATER DISTRICT
120 AND THE REQUEST FOR DELIVERY
OF WATER TO SENIOR SURFACE
WATER RIGHTS BY A & B IRRIGATION
DISTRICT, AMERICAN FALLS
RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY

and

IN THE MATTER OF GROUND WATER
DISTRICTS' APPLICATION FOR
APPROVAL OF MITIGATION PLAN FOR
THE AMERICAN FALLS REACH OF THE
SNAKE RIVER

**IGWA's MOTION TO AMEND MITIGATION
PLAN AND CONSOLIDATE IT WITH
DELIVERY CALL PROCEEDING**

Idaho Ground Water Appropriators, Inc. ("IGWA"), through its counsel, Givens Pursley
LLP, and on behalf of its ground water district members, Aberdeen-American Falls Ground
Water District, Magic Valley Ground Water District, Bingham Ground Water District, North

SNAKE Ground Water District, Bonneville-Jefferson Ground Water District, Southwest Irrigation District, and Madison Ground Water District (the "Ground Water Districts"), and pursuant to IDAPA 37.01.01.260.02, 305, and 556, hereby moves for an order in these two matters:

1) allowing IGWA thirty days to amend the Ground Water Districts' February 8, 2005 *Mitigation Plan for the American Falls Reach of the Snake River* ("IGWA's Mitigation Plan");¹ and 2) consolidating proceedings pertaining to IGWA's Mitigation Plan with the contested case in the Surface Water Coalition's ("SWC's") Delivery Call against certain ground water rights in the Eastern Snake Plain Aquifer (the "Delivery Call").² IGWA also believes that, once it is published and becomes a contested case, the May 12, 2005 *Request for Approval of Mitigation Plan of A&B Irrigation District* also should be consolidated with the Delivery Call.

IGWA's Mitigation Plan application has been protested by the Surface Water Coalition and others, and thus is a contested case before the Director. The original hearing date was vacated and not been rescheduled. The hearing on the parties' various motions for reconsideration of the Delivery Call ("Delivery Call Hearing") is yet to be scheduled. The Department's Rule of Procedure 556 authorizes consolidation of proceedings upon a finding that they are "related and the rights of the parties will not be prejudiced." IDAPA 37.01.01.556. Similarly, Rule 42(a), Idaho Rules of Civil Procedure, recites the familiar standard regarding consolidation:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the action; it may order all the actions

¹ The seven existing Ground Water Districts ("GWDs") submitted this mitigation plan on behalf of their respective members. However, because the five GWDs affected by the Delivery Call are represented by IGWA, references to IGWA here also are intended as a shorthand reference to those GWDs who filed the Mitigation Plan.

² SWC lodged the Delivery Call against only those ground water rights in Water District 120. However, the Director has sought to enforce it against ground water rights in both Water Districts 120 and 130. *See, e.g.,* May 2 Order at p. 17, para. 77 and at p. 45, para. 1.

consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

IGWA's Mitigation Plan and the Delivery Call are closely related; they are essential parts of the same controversy. In essence the Mitigation Plan is the Ground Water Users' answer to the SWC's petition. The parties in the actions essentially are the same.³ Determinations in one will affect the others and no party will be prejudiced by hearing them together. These matters should be consolidated for hearing.

IGWA separately has submitted its Statement for June 15, 2005 Status Conference in which it sets forth a proposed schedule for a Delivery Call Hearing in which the mitigation plans can be heard as consolidated matters.

The Director's May 2 Order, and other developments in the Delivery Call occurring after IGWA's Mitigation Plan was filed, change the nature and scope of potential mitigation measures. Of course, even these are subject to further refinement or change, depending on the outcome of the Delivery Call Hearing. In any event, IGWA respectfully requests the opportunity to amend IGWA's Mitigation Plan to reflect these changes.

RESPECTFULLY SUBMITTED this 14th day of June, 2005.

GIVENS PURSLEY LLP



Jeffrey C. Fereday
Michael C. Creamer

Attorneys for Idaho Ground Water Appropriators, Inc.

³ There is an exception to this: Idaho Power Company is a protestant to IGWA's Mitigation Plan, but was denied intervention in the Delivery Call.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June 2005, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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